

INTRODUCED _____
PUBLIC HEARING _____
COUNCIL ACTION _____
EXECUTIVE ACTION _____
EFFECTIVE DATE _____

**County Council of
Howard County, Maryland**

2008 Legislative Session

Legislative Day No. 5

Resolution No. 35-2008

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION adopted pursuant to the Maryland Economic Development Revenue Bond Act providing for the issuance by Howard County, Maryland, of up to \$11,000,000 of its limited obligation bonds and the loan of the proceeds thereof to Glenelg Country School, Inc. to be used to (1) refund the Howard County, Maryland Economic Development Revenue Bonds (Glenelg Country School Facility) Series 2003 A, B and C, (2) refinance a loan from Mercantile-Safe Deposit and Trust Company Bank to Glenelg Country School, Inc. made on May 31, 2005, and (3) finance costs of issuance and other related costs; reserving certain rights; providing for the issuance of bond anticipation notes for such purposes; authorizing the County Executive to specify, prescribe, determine, provide for or approve certain matters, details, documents or procedures; and specifying and describing various matters in connection therewith.

By the Council, _____, 2008

Introduced and read first time.

By Order, _____
Sheila M. Tolliver,
Administrator

ADOPTED:

By the Council, _____, 2008

Certified, _____
Sheila M. Tolliver,
Administrator

APPROVED: _____, 2008

Ken Ulman,
County Executive

NOTE: ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment.

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The General Assembly of the State of Maryland (the "State"), in the Act, declares its legislative purpose to:

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1 The Act provides that a public body may accomplish the acquisition of one or more
2 facilities from the proceeds of the sale of its bonds by one or more of the following methods:

3 (1) by leasing them to one or more facility users under a lease (as
4 defined in the Act);

5 (2) by selling them to one or more facility users under a sale agreement
6 (as defined in the Act);

7 (3) by lending proceeds of the sale of bonds to one or more facility users
8 under a loan agreement (as defined in the Act) to be used to finance or refinance one or
9 more facilities; or

10 (4) in such other manner as the County deems appropriate to accomplish
11 the purposes of the Act.

12 The Act provides that to implement the authority conferred upon it by the Act to
13 issue bonds, the legislative body of any county (as defined in the Act) or municipality (as
14 defined in the Act), or the board of directors of any authority (as defined in the Act), may
15 adopt a resolution pursuant to which it shall:

16 (1) specify and describe the facility or facilities;

17 (2) generally describe the public purpose to be served and the financing
18 or refinancing transaction to be accomplished under the Act;

19 (3) specify the maximum principal amount of the bonds that may be
20 issued; and

21 (4) impose any terms or conditions on the issuance and sale of the bonds
22 it deems appropriate.

23 The Act provides that the legislative body of any county or municipality, or the
24 board of directors of any authority, by resolution may itself specify and prescribe, or may
25 authorize:

26 (1) its finance board (as defined in the Act), by resolution; or

1 (2) its chief executive officer (as defined in the Act), by executive order
2 or otherwise; or

3 (3) any other appropriate administrative officer, by order or otherwise
4 with the approval of its chief executive officer, to specify, prescribe, determine, provide for
5 or approve such matters, details, forms, documents, or procedures as the legislative body or
6 board of directors deems appropriate to the authorization, sale, security, issuance, delivery
7 or payment of or for the bonds, including, without limitation, creation of security for the
8 bonds and provision for the administration of bond issues such as trust or other agreements
9 with banks or trust companies regarding any countersignature or delivery of bonds or
10 security for bonds.

11 Howard County, Maryland, a body politic and corporate and a political subdivision
12 of the State of Maryland (the "County") received a letter of intent dated April 24, 2008 (the
13 "Letter of Intent"), from Glenelg Country School, Inc., a Maryland non-stock corporation
14 (the "Facility Applicant"), pursuant to which the Facility Applicant requested the County to
15 issue and sell the County's bonds (as defined in the Act), as its limited obligations and not
16 upon its faith and credit or pledge of its taxing power, at any time or from time to time and
17 in one or more series, in an aggregate principal amount not to exceed \$11,000,000, pursuant
18 to and in accordance with the Act for the purpose of (1) refunding the Howard County,
19 Maryland Economic Development Revenue Bonds (Glenelg Country School Facility)
20 Series 2003 A, B and C (the "2003 Bonds"), (2) refinancing a loan from Mercantile-Safe
21 Deposit and Trust Company (predecessor-in-interest to PNC Bank, National Association) to
22 the Facility Applicant made on May 31, 2005 (the "2005 Loan") and (3) financing of
23 issuance costs and other costs of the transaction. The proceeds of the 2003 Bonds and the
24 2005 Loan were used to finance a portion of the cost of construction, renovation and
25 equipping of a facility located within the geographical borders of the County (the
26 "Facility"), and funding costs of issuance of the 2003 Bonds and other costs related to the
27 transaction.

1 The Letter of Intent indicates that the Facility being refinanced includes:

2 (a) (i) an approximately 25,000 square foot addition to the existing high school
3 building located on the existing campus at 12793 Folly Quarter Road, in Glenelg, Howard
4 County, Maryland (the "Campus"), which addition includes classrooms, science labs, a
5 library and computer rooms, and (ii) the renovation of that existing high school building;

6 (b) an approximately 35,000 square foot athletic facility located on the Campus;

7 (c) necessary or useful furnishings, equipment, and machinery; and

8 (d) such interests in land as may have been necessary or suitable for the foregoing,
9 including roads and rights of access, utilities and other necessary site preparation facilities.

10 The Facility Applicant intends to continue to use the Facility in connection with the
11 Facility Applicant's operation of an independent, coeducational, non-sectarian college
12 preparatory day school for students from pre-kindergarten through grade twelve.

13 The Letter of Intent further expresses the Facility Applicant's intention that the
14 interest payable on such bonds will be excludible from the gross income of the owners
15 thereof for purposes of federal income taxation pursuant to Sections 103 and 145 of the
16 Internal Revenue Code of 1986, as amended (the "Code").

17 The County, based upon the findings and determinations and subject to the
18 reservation of certain rights, all as set forth below, has determined to issue, sell and deliver,
19 at any time or from time to time and in one or more series, its bonds (as defined in the Act)
20 in an aggregate principal amount not to exceed \$11,000,000 (the "Bonds"), and to lend the
21 proceeds of the Bonds of each series to the Facility Applicant upon the terms and conditions
22 of one or more loan agreements (each, a "Loan Agreement") to be entered into between the
23 County and the Facility Applicant, such proceeds to be used by the Facility Applicant for the

1 purposes of (1) refunding the Series 2003 Bond, (2) refinancing the 2005 Loan and (3)
2 financing issuance costs and other costs of the transaction.

3 **Now, therefore, in accordance with the Act:**

4 **Section 1. Be it resolved by the County Council of Howard County, Maryland,**
5 That the words and terms used in this Resolution (including the Recitals set forth above) that
6 are defined in the Act shall have the meanings indicated in the Act, unless the context
7 clearly requires a contrary meaning.

8 **Section 2. And be it further resolved by the County Council of Howard**
9 **County, Maryland,** That acting pursuant to the Act, it is hereby found and determined as
10 follows:

11 (1) The County is a "public body" and a "county" within the meaning of
12 the Act.

13 (2) The Facility Applicant is a "facility applicant" and will be a "facility
14 user" within the meaning of the Act.

15 (3) The Facility is a "facility" within the meaning of the Act.

16 (4) The County Executive of the County (the "County Executive") is the
17 "chief executive officer" of the County within the meaning of the Act.

18 (5) The Letter of Intent is a "letter of intent" within the meaning of the
19 Act.

20 (6) The word "bonds," as defined in the Act, includes bond anticipation
21 notes issued in anticipation of the issuance and sale of bonds.

22 (7) The issuance and sale of the Bonds by the County, pursuant to the
23 Act, for the sole and exclusive purpose of refinancing the costs (to the fullest extent
24 permitted by the Act) of the Facility will facilitate and expedite the refinancing of the
25 Facility.

1 (8) The refinancing of the Facility as provided in this Resolution will
2 promote the declared legislative purposes of the Act by (a) sustaining jobs and employment
3 by the creation or retention of a significant number of jobs, thus relieving conditions of
4 unemployment in the State and in Howard County; (b) encouraging the increase of industry
5 and commerce and a balanced economy in the State and in Howard County; (c) assisting in
6 the retention of existing industry and commerce and in the attraction of new industry and
7 commerce in the State and in Howard County by, among other things, the purchase of
8 supplies and services from other businesses in Howard County; (d) promoting economic
9 development in the State and in Howard County by stimulating the local economy; and (e)
10 generally promoting the health, welfare and safety of the residents of the State and Howard
11 County.

12 (9) The Bonds of any series and the interest on them are limited obligations of
13 the County the principal of, premium, if any, and interest on which are payable solely
14 (except for bond anticipation notes) from revenues to be received in connection with the
15 refinancing of the Facility or from any other moneys made available to the County for such
16 purpose. Neither the Bonds of any series nor the interest thereon shall ever constitute an
17 indebtedness or a charge against the general credit or taxing powers of the County within the
18 meaning of any constitutional or charter provision or statutory limitation and neither shall
19 ever constitute or give rise to any pecuniary liability of the County.

20 (10) Neither the proceeds of the Bonds of any series nor the payments of the
21 principal of and premium, if any, and interest on the Bonds of any series will be
22 commingled with the County's funds or will be subject to the absolute control of the County,
23 but will be subject only to such limited supervision and checks as are deemed necessary or
24 desirable by the County to ensure that the proceeds of the Bonds of any series are used to

1 accomplish the public purposes of the Act and this Resolution. The transactions provided for
2 hereby do not constitute any physical public betterment or improvement or the acquisition of
3 property for public use or the purchase of equipment for public use. The public purposes
4 expressed in the Act are to be achieved by facilitating the refinancing of the Facility.

5 **Section 3. And be it further resolved by the County Council of Howard**
6 **County, Maryland,** that this Resolution, among other things, evidences the present intent of
7 the County to issue, sell and deliver the Bonds in accordance with the terms and provisions
8 of this Resolution. The County Executive of the County is hereby authorized, empowered,
9 and directed to accept the Letter of Intent on behalf of the County in order to further
10 evidence the intent of the County to issue and sell the Bonds in accordance with the terms
11 and provisions of this Resolution.

12 **Section 4. And be it further resolved by the County Council of Howard**
13 **County, Maryland,** That the County shall issue, sell and deliver the Bonds, at any time or
14 from time to time and in one or more series, in an aggregate principal amount not to exceed
15 \$11,000,000, subject to the provisions of this Resolution. The County will lend the
16 proceeds of the Bonds of any series to the Facility Applicant pursuant to the terms and
17 provisions of a Loan Agreement, to be used by the Facility Applicant for the purpose of
18 refinancing the costs of the Facility and funding costs of issuance of the Bonds, reserves and
19 other costs related to the transaction.

20 Any Loan Agreement entered into with respect to the Bonds of any series will
21 require that (1) the proceeds of the Bonds be used solely to (a) refund the 2003 Bonds, (b)
22 refinance the 2005 Loan and (c) finance costs of issuance of the Bonds and other related
23 costs of the transaction; and (2) the Facility Applicant makes, or cause to be made, payments
24 which will be sufficient to enable the County to pay the principal of and interest and
25 premium, if any, on the Bonds when and as the same become due and payable.

26 The Facility is specified and described in the Recitals set forth above. The public
27 purpose to be served by the issuance and sale of the Bonds is described in Section 2 of this

1 Resolution, in this Section and in the Recitals set forth above. The maximum principal
2 amount of the Bonds that may be issued is \$11,000,000, provided that bond anticipation
3 notes may be issued and sold as provided in Section 6 of this Resolution.

4 **Section 5. And be it further resolved by the County Council of Howard**
5 **County, Maryland,** That the County reserves the right, in its sole and absolute discretion, to
6 take any actions deemed necessary by the County in order to ensure that the County (1)
7 complies with present federal and State laws and any pending or future federal or State
8 legislation, whether proposed or enacted, which may affect or restrict the issuance of the
9 Bonds, and (2) issues the Bonds, within the limits imposed by such present laws or any such
10 pending or future legislation or any future local laws, to finance those facilities which the
11 County determines, in its sole and absolute discretion, will provide the greatest benefit to the
12 residents of the County and the State.

13 Pursuant to the provisions of this Section 5, the County reserves the right in its sole
14 and absolute discretion, to, among other things, (1) never issue the Bonds, (2) issue only a
15 portion of the aggregate principal amount of the Bonds required by the Facility Applicant,
16 (3) restrict the use of the proceeds of the Bonds, (4) delay indefinitely the issuance of the
17 Bonds, or (5) take any other actions deemed necessary by the County, in its sole discretion,
18 in order to ensure that the County achieves the goals set forth in the Act and in this
19 Resolution.

20 **Section 6. And be it further resolved by the County Council of Howard**
21 **County, Maryland,** That, as permitted by the Act, the provisions set forth in this Resolution
22 for the issuance and sale of the Bonds are intended and shall be deemed to include
23 provisions for the issuance and sale of bond anticipation notes without the adoption of any
24 further resolution or other action by the legislative body of the County. Accordingly, the
25 words "bonds" and "Bonds," as used in this Resolution, shall include such bond anticipation
26 notes, unless the context clearly requires a contrary meaning. At no time shall the aggregate
27 principal amount of any bond anticipation notes exceed the amount set forth in Section 4 of

1 this Resolution. It is intended that the aggregate principal amount of issued and outstanding
2 bond anticipation notes when added to the aggregate principal amount of issued and
3 outstanding Bonds in anticipation of which such notes were issued, shall not exceed the
4 aggregate principal amount set forth in Section 4 of this Resolution at any time. The County
5 will agree to pay any bond anticipation notes issued pursuant to this Resolution and the
6 interest and premium, if any, thereon from the proceeds of the Bonds in anticipation of the
7 sale of which such notes are issued, and the County will agree to issue such Bonds when,
8 and as soon as, the reason for deferring the issuance of the Bonds no longer exists. The
9 timely issuance of such Bonds, however, is dependent upon matters not within the control of
10 the County, including (without limitation) the existence of a purchaser or purchasers for
11 such Bonds at the time the reason for deferring the issuance of the Bonds no longer exists
12 and the effectiveness of various actions taken by the Facility Applicant, their officers, agents
13 and employees.

14 **Section 7. And be it further resolved by the County Council of Howard**
15 **County, Maryland,** That the Bonds, or any bond anticipation notes authorized by this
16 Resolution, may be issued at any time or from time to time and in one or more series, and
17 each series of the Bonds shall be identified by the year of issue or by some other or
18 additional appropriate designation; provided, however, that the Bonds must be issued within
19 one year from the effective date of this Resolution as set forth in Section 13 hereof. The
20 provisions in this Resolution providing for the issuance of the Bonds shall expire with
21 respect to Bonds which have not been issued within such period, unless, either prior to or
22 after such provisions expire, the County Council of Howard County, Maryland adopts, and
23 the County Executive approves, a resolution supplemental hereto, which extends the period
24 of time during which the Bonds may be issued.

25 **Section 8. And be it further resolved by the County Council of Howard**
26 **County, Maryland,** That the Bonds shall be executed in the name of the County and on its
27 behalf by the County Executive, by his manual or facsimile signature, and by the Director of

1 Finance of the County, by her manual or facsimile signature, and the corporate seal of the
2 County or a facsimile thereof shall be impressed or otherwise reproduced thereon and
3 attested by the Chief Administrative Officer of the County, by his manual or facsimile
4 signature. At least one signature required or permitted to be placed on the Bonds must be
5 manually subscribed. If the Bonds are required to be manually signed by a trustee, issuing
6 agent, fiscal agent, registrar, or other agent or custodian, any other signature required or
7 permitted to be placed on the Bonds may be executed by facsimile. Any Loan Agreement
8 and, where applicable, all other documents as the County Executive deems necessary to
9 effectuate the issuance, sale and delivery of the Bonds of any series, shall be executed in the
10 name of the County and on its behalf by the County Executive by his manual signature, and
11 the corporate seal of the County or a facsimile thereof shall be impressed or otherwise
12 reproduced thereon and attested by the Chief Administrative Officer of the County by his
13 manual signature. If any officer whose signature or countersignature or a facsimile of
14 whose signature or countersignature appears on the Bonds of any series or any of the
15 aforesaid documents ceases to be such officer before the delivery of the Bonds of such series
16 or any of the other aforesaid documents, such signature or countersignature or such
17 facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such
18 officer had remained in office until delivery. The County Executive, the Director of Finance
19 of the County, the Chief Administrative Officer of the County and other officials of the
20 County are hereby authorized and empowered to do all such acts and things and execute
21 such documents and certificates as the County Executive may determine to be necessary to
22 carry out and comply with the provisions of this Resolution, subject to the limitations set
23 forth in the Act and any limitations set forth in this Resolution.

24 **Section 9. And be it further resolved by the County Council of Howard**
25 **County, Maryland,** That, as permitted by the Act, the Bonds of any series shall be sold at
26 private (negotiated) sale and at par, unless the County Executive deems it to be in the best
27 interests of the County to sell the Bonds of any series at public sale or above or below par, in

1 either or both of which events, the Bonds of such series shall be sold in such manner and
2 upon such terms as the County Executive deems to be in the best interests of the County.

3 **Section 10. And be it further resolved by the County Council of Howard**
4 **County, Maryland,** That prior to the issuance, sale and delivery of the Bonds of any series,
5 regardless of the date on which such Bonds are issued, the County Executive, by executive
6 order or otherwise:

7 (1) shall prescribe the form, tenor, terms and conditions of and security
8 for the Bonds of such series;

9 (2) shall prescribe the principal amounts, rate or rates of interest,
10 denominations, date, maturity or maturities (within the limits prescribed in the Act), and the
11 time and place or places of payment of the Bonds of such series, and the terms and
12 conditions and details under which the Bonds of such series may be called for redemption
13 prior to their stated maturities;

14 (3) if necessary, may appoint a trustee, a bond registrar and a paying
15 agent or agents, for the Bonds of such series;

16 (4) shall approve the form and contents of, and execute and deliver
17 (where applicable), the Loan Agreement, and such other documents, including (without
18 limitation) trust agreements, assignments, mortgages, deeds of trust, guaranties and security
19 instruments to which the County is a party and which may be necessary to effectuate the
20 issuance, sale and delivery of the Bonds of such series;

21 (5) may prepare and distribute, in conjunction with representatives of the
22 Facility Applicant and the prospective purchasers or underwriters for the Bonds of any
23 series, both a preliminary and a final official statement in connection with the sale of the
24 Bonds of any series, if such preliminary official statement and final official statement are
25 determined to be necessary or desirable for the sale of the Bonds of such series, provided,
26 however, that any such preliminary official statement shall be clearly marked to indicate that
27 it is subject to completion and amendment;

1 (6) may execute and deliver a contract or contracts for the purchase and
2 sale of the Bonds of any series (or any portion thereof) in form and content satisfactory to
3 the County Executive;

4 (7) shall determine the time of execution, issuance, sale and delivery of
5 the Bonds of such series and prescribe any and all other details of the Bonds of such series;

6 (8) shall determine the method, and approve the terms, of the sale of the
7 Bonds of such series, as provided in Section 9 of this Resolution;

8 (9) shall provide that the Facility Applicant shall pay directly, or cause to
9 be paid, all costs, fees and expenses incurred by or on behalf of the County in connection
10 with the issuance, sale and delivery of the Bonds, including (without limitation) costs of
11 printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel)
12 and compensation to any person (other than full-time employees of the County) performing
13 services by or on behalf of the County in connection therewith;

14 (10) may provide for the issuance and sale (subject to the passage at the
15 time of an appropriate resolution authorizing the same) of one or more series of additional
16 bonds and one or more series of refunding bonds;

17 (11) may provide for the funding of reserves for the Bonds, for the
18 payment of working capital, and for the payment of interest on the Bonds in such amounts,
19 or for such period, as the County Executive deems reasonable; and

20 (12) may do any and all things necessary, proper or expedient in
21 connection with the issuance, sale and delivery of the Bonds of such series and in order to
22 accomplish the legislative policy of the Act and the public purposes of this Resolution,
23 subject to the limitations set forth in the Act and any limitations prescribed by this
24 Resolution.

25 **Section 11. And be it further resolved by the County Council of Howard**
26 **County, Maryland,** That subsequent to the issuance, sale and delivery of the Bonds of any
27 series, regardless of the date on which such Bonds are issued, the County Executive, by

1 executive order or otherwise, may execute and approve on behalf of the County any
2 amendments to the documents executed on behalf of the County in connection with the
3 issuance, sale and delivery of the Bonds pursuant to the provisions of such documents,
4 subject to any approval by the County Council as may be required pursuant to federal tax
5 law in order to preserve the tax-exempt status of any Bonds the interest on which is intended
6 to be excludible from gross income for purposes of federal income taxation.

7 **Section 12. And be it further resolved by the County Council of Howard**
8 **County, Maryland,** That the provisions of this Resolution are severable, and if any
9 provision, sentence, clause, section or part hereof is held to be illegal, invalid or
10 unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity or
11 unconstitutionality, or inapplicability shall not affect or impair any of the remaining
12 provisions, sentences, clauses, sections, or parts of this Resolution or their application to
13 other persons or circumstances. It is hereby declared to be the legislative intent that this
14 Resolution would have been passed if such illegal, invalid or unconstitutional provision,
15 sentence, clause, section or part had not been included herein, and if the person or
16 circumstances to which this Resolution or any part hereof are inapplicable had been
17 specifically exempted therefrom.

18 **Section 13. And be it further resolved by the County Council of Howard**
19 **County, Maryland,** That this Resolution shall take effect on the date of its approval by the
20 County Executive.